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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re JULIANA P. et al., Persons Coming
Under the Juvenile Court Law.

SOLANO COUNTY HEALTH &
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

MEGAN P.,

Defendant and Appellant.

A143880

(Solano County
Super. Ct. No. J42631, J42632)

Following an emergency trip to the hospital in which four-year-old Sean T. tested presumptively positive for methamphetamine, the Solano County Health and Social Services Department (the Department) filed Welfare and Institutions Code section 300¹ petitions alleging that siblings Sean T. and Juliana P. (the children) came within the jurisdiction of the juvenile court and detained the children. The juvenile court found the children came within its dependency jurisdiction under section 300, subdivision (b) (failure to protect). In its disposition, the court ordered the children returned home to the care of Brian T. (father) on a case plan of family maintenance services, and removed them from the physical custody of Megan P. (mother) with family reunification services.

¹ All further unspecified statutory references are to the Welfare and Institutions Code.

Mother appeals the finding of jurisdiction, claiming insufficient evidence supports the finding that the children are persons described by section 300, subdivision (b).² We disagree and will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 7, 2014, father returned home to find Sean lethargic and vomiting. There was an empty Excedrin bottle under Sean's bed and two pills had spilled out onto the floor. Father took Sean to the hospital, where a urine toxicology test was positive for methamphetamine.

Sean had been in mother's care that morning. When she later arrived at the hospital, a Fairfield Police Department officer interviewed both parents. Father and mother stated that they were the only adults in the home and they had supervised four children that day: four-year-old Sean, five-year-old Juliana, and two other children.³ No other adults had supervised Sean that day. Both parents denied any knowledge of how Sean came to test positive for methamphetamine, denied any use of methamphetamine, and denied ever seeing methamphetamine in the home. Mother also generally denied any history of drug use.

Father and mother were arrested and searched. Before mother was searched, she reported that she had a box cutter in her pocket and some Xanax and Ritalin in her bra. A Dixie cup containing blue and white powder was found in her bra. Police also found a plastic zip lock baggie containing an off-white crystalline substance, a green folded piece of paper which contained one oxycodone pill and one acetaminophen-hydrocodone pill, and two plastic straws with white powder residue. When the straws were found, mother spontaneously stated that the white powder was Ritalin. However, both the white powder on the straws and the off-white substance in the baggie tested positive for methamphetamine.

² Father Brian T. has not filed an appeal.

³ We are informed that no petition was filed as to the other two children. No further discussion of them is necessary to our resolution of this appeal.

Father was charged with child endangerment. Mother was charged with child endangerment, possession of methamphetamine and possession of a controlled substance. Sean and Juliana were placed in foster care.

According to the department's detention report, on August 8, 2014, a hospital nurse stated that Sean tested positive for methamphetamine but indicated that his condition had stabilized and he was ready to be discharged. She stated that ingesting Excedrin would not produce a positive test for methamphetamine.

The maternal grandparents stated that mother was addicted to prescription medication "years ago," but they were not aware of mother or father using methamphetamines.

Mother admitted a misdemeanor conviction from 2008 for driving under the influence of drugs and/or alcohol for which she served two days in jail and thirty-six months on probation. Mother stated that she found the straws on the morning of August 7, 2014, outside the house. She said her neighbors used methamphetamine and she picked up the straws because she did not want her children to find them. She provided no explanation for the substance in the baggie that tested positive for methamphetamine.

The Department filed section 300 petitions on behalf of Juliana P. and Sean T., alleging that mother and father had failed to protect them from exposure to methamphetamine, thereby placing the children at risk of harm. The Department asked the parents to drug test.

On August 12, 2014, the Department filed a detention report, recommending that the children be detained from the parents. The detention hearing was held the same day. Both parents objected and submitted as to the issue of detention. The juvenile court detained the children and ordered supervised visitation for the parents. The children were placed with the maternal grandparents. The court ordered alcohol and drug testing and parenting education for mother and father.

The department filed a jurisdiction/disposition report on September 5, 2014, recommending that Sean and Juliana be adjudged dependents and the parents receive family reunification services. Mother had refused to produce a sample when the

department asked her to drug test. ~(CT 83)~ The social worker reported that she attempted to speak by telephone with mother and father. Mother informed the worker that her criminal charges had been dropped, and she felt the children should be returned to her care. When the worker inquired with the Department of Justice (DOJ) about mother's criminal charges, the DOJ reported no disposition.

Thereafter, both mother and father refused to speak with the social worker without their respective attorneys present. Both parents requested a contested jurisdictional and dispositional hearing.

Attached to the jurisdiction/disposition report was a case plan recommending, inter alia, that mother complete the following service objectives: (1) stay free from illegal drugs and comply with all required drug tests; (2) complete a parenting skills program; (3) contact the Behavioral Health Assessment Team (BHAT) for a substance abuse assessment; (4) participate in a substance abuse assessment; (5) sign a release for the substance abuse assessment and follow all recommendations of the assessor. The case plan stated that failure to attend requested drug testing would be considered a positive drug test result. Mother did not sign the case plan.

On November 17, 2014, the department submitted to the court a laboratory report for a hair strand drug test dated November 10 showing that mother had tested positive for methamphetamine.

After several continuances, the contested jurisdictional and dispositional hearing was held on November 18, 2014. Social worker Mayra Montaña testified as an expert in child welfare services. She conducted a risk assessment in this case and found that the risk was very high.

In assessing the risk, Montaña reviewed the police report, which indicated that Sean tested positive for methamphetamine and mother was found to have several controlled substances on her person. Montaña also reviewed Sean's medical reports, including the urinalysis drug test that yielded a presumptive positive result for methamphetamine. Sean had only been in the parents' care when he tested positive for methamphetamine, but the parents had no explanation for the positive test.

Montaño also described mother's drug testing. Of the six times the department asked her to test, mother had tested on four occasions. The two tests she missed were considered presumptively positive. Mother claimed not to have received Montaño's email asking her to test in late October; Montaño did not know if mother had an explanation for missing an August drug test. Her most recent test, earlier in November, was positive for methamphetamine. This was a hair strand test which indicated that mother had used methamphetamine within the last 90 days. Mother attended the BHAT assessment, but she told the assessor that she did not have a drug problem and had not recently used any drugs. Based on the information provided by mother, BHAT was not able to offer her any substance abuse services.

Montaño testified that mother's confirmed positive hair strand test and her dishonesty with BHAT were factors that led her to conclude that mother did not acknowledge her substance abuse problem and was not receptive to addressing it, placing the children's safety at greater risk. Montaño also considered the very young ages of the children and the parents' unwillingness to speak with her. The parents' behavior made it difficult to communicate about the dependency process or services. It also made it difficult for the parents to demonstrate any efforts to lower the risk to the children, such as developing a safety plan.

On cross-examination, Montaño acknowledged that the urinalysis test for Sean was a presumptive screening test only, and no confirming test was conducted. Typically, an individual testing positive for methamphetamine would also test positive for amphetamines, but Sean did not test positive for amphetamines. Sean was not admitted to the hospital and did not suffer serious injury. Montaño also acknowledged that mother had enrolled in a parenting class.

At the continued hearing on December 19, 2014, the parties reached a resolution as to jurisdiction and disposition. In the interim, the parents had completed a parenting class and father continued to drug test negative. The department moved to amend the

section 300, subdivision (b)(1) count and to dismiss the other counts in the petition.⁴ Father agreed to jurisdiction. Mother objected and submitted on sustaining the amended section 300, subdivision (b)(1) count. The court sustained the subdivision (b)(1) count and dismissed the others, and removed the children from mother's custody. Mother agreed to participate in family reunification services including a substance abuse assessment and to follow the resulting recommendations. The parties agreed to return the children to father's custody with intensive family maintenance services. Mother was to move out of the family home and live with her parents. She continued to have supervised visits.

Mother filed a timely notice of appeal.

DISCUSSION

Mother contends the juvenile court's orders sustaining dependency jurisdiction over the children should be reversed as to her because the department did not meet its burden of showing the children had suffered substantial physical harm or were at substantial risk of suffering such harm as alleged in the section 300 petition.

At the jurisdictional hearing, the petitioner must prove by a preponderance of the evidence that the minor falls within any of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) On appeal, our review for substantial evidence is governed by "familiar principles:" In assessing the sufficiency of the evidence, we consider whether there is any substantial evidence, contradicted or not, which supports the juvenile court's finding. We view the evidence in the light most

⁴ The amended section 300, subdivision (b)(1) count states: "On or about August 8, 2014, the mother . . . was arrested at NorthBay Hospital by Fairfield Police Department for the possession of a controlled substance, possession of narcotic/controlled substance and child cruelty: possible injury or death. The minor, Sean . . . , was vomiting, exhibiting lethargy, and complaining of feeling ill and was brought to NorthBay Hospital where he tested positive for Methamphetamine and the mother had no reasonable explanation of how this had occurred. The failure or inability of the mother to adequately supervise the minor and protect him from seriously harmful and dangerous substances places the minors, Sean . . . and Juliana . . . , at substantial risk of serious physical harm or illness."

favorable to the prevailing party, resolving conflicts and drawing all reasonable inferences in support of the juvenile court's decision. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820; see also *In re I.J.* (2013) 56 Cal.4th 766, 773; *In re R.M.* (2009) 175 Cal.App.4th 986, 988-989.) "Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]" (*In re Veronica G.*, *supra*, 157 Cal.App.4th at p. 185.)

Under section 300, subdivision (b), a child is subject to juvenile court jurisdiction if the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness." (§ 300, subd. (b)(1).) "The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820.)

Mother concedes that "[t]he department may have shown poor judgment on mother's part . . . when an empty bottle of Excedrin was found under Sean's bed and methamphetamines were found in her possession." However, she continues, because Sean's positive screening test was not confirmed by further testing, it might have been a false positive, and ultimately Sean was not admitted to the hospital. Thus, the department failed to prove he sustained serious harm or the children were at substantial risk of harm. We disagree.

Here, there was ample evidence of neglectful conduct by the parents that resulted in serious physical harm to Sean and a substantial risk of such harm to Juliana. We have previously observed that "a child's ingestion of illegal drugs constitutes 'serious physical harm' for purposes of section 300. [Citation.]" (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825.) While at home with mother, Sean became seriously ill and had to be taken to the hospital, where a screening urinalysis was positive for methamphetamine. Mother was

arrested at the hospital after a search of her person revealed five different controlled substances including methamphetamine. She had no explanation for Sean's positive screening test. Based on this evidence, the juvenile court could find that Sean suffered serious physical harm and Juliana was exposed to substantial risk of serious physical harm. Under the substantial evidence standard of review, the possibility that the screening test yielded a false positive does not change this result.

Notwithstanding the circumstances at the time the children were detained, mother argues that, by the time of the jurisdictional and dispositional hearing some three to four months later, there was no substantial evidence that the children were persons described in section 300, subdivision (b), that is, there was no substantial evidence of any substantial risk of physical harm or illness to the children. She bases her argument on the statutory language which provides: "The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness." (§ 300, subd. (b)(1).)

The department points out that appellate courts are divided on the issue of whether the juvenile court must find that a child is at current risk of harm at the time of jurisdiction. (Compare, e.g., *In re J.N.* (2010) 181 Cal.App.4th 1010 [current risk required], with *In re J.K.* (2009) 174 Cal.App.4th 1426, 1435 & fn. 5 [prior serious harm is sufficient].) We need not address this point, however, because sufficient evidence supported a substantial risk of harm at the time of the jurisdictional hearing. In support of her contention that no evidence supported a substantial risk, mother points to the department's failure to confirm Sean's positive presumptive screening test for methamphetamine, mother's completion of a parenting course, mother's cooperation with the department, and her clean drug tests.

At the time of the hearing, mother continued to deny any substance abuse but the result of a hair strand drug test was confirmed positive for methamphetamine use. Mother failed to drug test on two occasions when asked by the department, and at the BHAT assessment, mother reported that she did not have a substance abuse issue and had not recently used any substances. This evidence, in addition to earlier evidence that

mother minimized the number of controlled substances she was carrying when she was arrested at the hospital, falsely stated that the substance on the straws was Ritalin when in fact it was methamphetamine, and failed to provide any explanation for her baggie of methamphetamine or Sean's positive screening test, amply supports a finding that mother was not credible on the issue of her substance abuse and not amenable to taking steps, such as working with the department to create a safety plan, to decrease the risk to the children. The children were four and five years old, not old enough "to avoid the kinds of physical dangers which make infancy an inherently hazardous period of life." (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825.) Under the circumstances, the juvenile court reasonably could, and presumably did, conclude that four and five-year-old children are subjected to a substantial risk of serious physical harm by being placed in an environment allowing unexplained access to medication and/or drugs with a parent who has an unacknowledged drug problem and provides inadequate supervision. (See *ibid.*) Substantial evidence in the record supports a finding that the substantial risk of serious harm of the type Sean had already suffered was ongoing in this case.

The cases mother cites are not to the contrary. In both *In re James R., Jr.* (2009) 176 Cal.App.4th 129, 136 and *In re David M.* (2005) 134 Cal.App.4th 822, 829-832, jurisdiction was reversed because there was no evidence of any harm or substantial risk of harm to the minors from the parents' conduct, and any causal link was speculative. In *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1319, 1320-1321, there was no risk of physical harm from mother's delusional behavior, but jurisdiction was sustained because of the minor's risk of suffering severe emotional damage under section 300, subdivision (c). Finally, a single drunk-driving incident with no evidence of any ongoing substance abuse and no evidence from which to infer a substantial risk that the behavior would recur was insufficient to support dependency jurisdiction in *In re J.N.*, *supra*, 181 Cal.App.4th at pp. 1025-1027.

Mother raises no separate challenge to the dispositional orders.

DISPOSITION

The orders appealed from are affirmed.

Miller, J.

We concur:

Kline, P. J.

Stewart, J.